रजिस्ट्री सं० डी० एल० (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 29] नई दिल्ली, अक्तूबर 30—नवम्बर 5, 2011, शनिवार/कार्तिक 8—कार्तिक 14, 1933
No. 29] NEW DELHI, OCTOBER 30—NOVEMBER 5, 2011, SATURDAY/KARTIKA 8—KARTIKA 14, 1933

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II —खण्ड 3 —उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 13 सितम्बर, 2011

आ.अ. 159 .—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग, 2010 की सिविल अपील संख्या 6391-6393/2010 में भारत के सर्वोच्च न्यायालय के 12 मई, 2011 का निर्णय/आदेश यहां प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/केरल-लो.स./3,7,8/2009/2010]

आदेश से,

तपस कुमार, प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 13th September, 2011

O. N. 159 .—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the Supreme Court of India dated 12th May, 2011 in Civil Appeal Nos. 6391—6393 of 2010.

[No. 82/KL-HP/3,7,8/2009/2010]

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOs. 6391—6393 OF 2010

Kodikunnil Suresh @ J. Monian ... Appellant

Versus

N. S. Saji Kumar, Etc. Etc. . .. Respondents

JUDGMENT

A. K. PATNAIK, J.

This is an appeal under Section 116A of the Representation of the People Act, 1951 (for short 'the Act') against the common order dated 26-07-2010 of the Kerala High Court in Election Petition Nos. 3 of 2009,7 of 2009 and 8 of 2009 declaring the election of the appellant to the House of People from the Mavelikkara Parliamentary Constituency reserved for the Scheduled Castes void under Section 100 (1)(a) and (d) (i) of the Act.

2. The facts very briefly are that No.16 Mavelikkara Parliamentary Constituency is reserved for the Scheduled Castes. Section 4 (a) of the Act provides that a person shall not be qualified to be chosen to fill a seat in the

House of the People unless in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State and is an elector for any Parliamentary Constituency. For elections to the Mavelikkara reserved constituency in the year 2009, the appellant filed his nominations before the Returning Officer on 23-03-2009 declaring in the nomination papers that he belongs to the Hindu Cheramar Caste and filed alongwith the nomination papers a caste certificate dated 12-03-2009 issued by the Tehsildar, Nedumangad that the Caste Cheramar has been declared as a Scheduled Caste in relation to the State of Kerala in Entry 54 in Part VIII of the Schedule to the Constitution (Scheduled Castes) Order, 1950. Objections were filed before the Returning Officer contending that the appellant was not a member of the Scheduled Caste and instead he was a Christian. The Returning Officer after examining the nomination papers of the appellant rejected the objections and accepted the nomination papers of the appellant under Section 36 of the Act. Polling in the constituency took place on 16-04-2009 and after counting, the result of the election was declared on 16-05-2009. The appellant secured 3,97,211 votes and the appellant was declared elected by a margin of 48,048 votes over the defeated candidate who secured 3,49,163 votes.

3. The election of the appellant was challenged by two voters of the Mavelikkara Parliamentary Constituency in Election Petition Nos. 3 of 2009 and 8 of 2009 and by the defeated candidate in Election Petition No.7 of 2009. The ground of challenge in Election Petition Nos. 3 of 2009 and 8 of 2009 was that the appellant was a Christian and under the Constitution (Scheduled Castes) Order, 1950 only a Hindu can be a Scheduled Caste and not being a Scheduled Caste, he was not qualified to be chosen to fill a seat in the House of the People under Section 4(a) of the Act and accordingly his election was void under Section 100 (1) (a) of . the Act. In Election Petition No.7 of 2009 filed by the defeated candidate, besides the aforesaid grounds, an additional ground was taken that the nomination of the appellant was improperly accepted and that the election of the appellant was void under Section 100(1)(d)(i) of the Act, inasmuch as the result of the election so far as it concerned the returned candidate had been materially affected by the improper acceptance of the nomination of the appellant. The appellant pleaded in his written statements filed in the three cases that his father and mother were both Hindus, but due to their poverty they had availed various reliefs from Christian Missionaries and that is why his father was known as Joseph is further case was that in 1978 he had undergone an expiatory ceremony and had reconverted himself to Hinduism and had also been accepted as a member of the Cheramar caste and he was therefore qualified to contest the election from the Mavelikkara Parliamentary Constituency reserved for Scheduled Castes. The High Court framed issues in the three cases, examined witnesses and admitted documents and on consideration of the oral testimony and documentary evidence declared the election of the appellant void under Sections 100 (l)(a) and 100 (l)(d)(i) of the Act by the impugned order.

4. The findings recorded by the High Court in the impugned order are that the appellant was born to Christian parents and due to conversion to Christianity the parents of the appellant had lost their caste because. Christianity did not admit any differentiation on the basis of castes. The High Court further held that when the appellant undertook the expiatory ceremony in 1978 to convert himself to Hinduism, he had not attained the age of discretion as he was under 18 years of age. The High Court, however, held that though the appellant married a Hindu and he professed Hindu religion from the time of his admission in the law college at Thiruvananthapuram, there was no acceptable evidence to prove that the appellant was accepted as a member of the Cheramar Caste after his re-conversion to Hinduism. Relying on the decisions of this Court that without acceptance by the Scheduled Caste community after re-conversion, the reconvert does not get back to his original caste, held that the appellant after his re-conversion did not become a member of the Cheramar Caste and hence he was not qualified to contest from the Mavelikkara reserved constituency and his nomination was improperly accepted and his election was void.

5. Mr. P. P. Rao, learned counsel for the appellant, submitted that although the appellant pleaded in his written statements and led evidence to show that his father Kunjan and his mother Thankamma were Hindus, the High Court unfortunately has observed in the impugned order that the fact that his father was converted to Christian religion was not seriously disputed at the time of recording the evidence. He submitted that in his written statements filed in the three cases the appellant has denied that his parents were Christian and has explained that his father came to be called as 'Joseph' by the Christian Missionaries to whom his father went for help. He submitted that the name of the mother of the appellant was Thankamma, which is not a Christian name. The case of the appellant was that his parents continued to profess and practice Hinduism. He submitted that in Ajit Datt Ethel Walters & Ors. [AIR 2001 Allahabad 109] the Allahabad High Court has taken the view that without baptism there can be no conversion. He submitted that no documentary evidence had been produced by the respondents to establish that the father of the appellant was baptised and inducted into the Christian religion. He argued that no clergyman or pastor or Christian priest or any person from a Church has been examined to establish that the father of the appellant was converted to Christian religion by baptism. He referred to the evidence of PW-l

N. S. Saji Kumar, the petitioner in Election Petition No. 3 of 2009, to show that he had no knowledge about the family of the appellant at all and had not made any inquiry to find out the religion of the father of the appellant. He also referred to the evidence of PW-2 P.K. Padmakaran, the petitioner in Election Petition No.8 of 2009, to show that he had not gone to Church to find out whether the father of the appellant was Christian and all that he has said in his evidence is that the appellant was born as a Christian. He submitted that similarly PW -3 K. Prakash Babu, the Chief Election Agent of the defeated candidate, has merely stated in his evidence that when the appellant was born, his father was a Christian. He submitted that the entire case of the three Election Petitioners appears to be based on the entries in the School Admission Register (Exhibit P-9) in which the religion of the appellant is mentioned as Christian, but the said entries were made on the basis of the information furnished by Thomas, who did not really know that the religion of the father of the appellant was Hinduism and not Christianity. He cited M. Chandra v. M. Thangamuthu [2010 (9) SCALE 145] in which this Court has held that the burden of proving that the returned candidate was a Christian and did not belong to a Scheduled Caste as per the Presidential Order is on the election petitioner. He also cited an unreported decision of this Court delivered on 30-04-2009 in Ranjana v. State of Maharashtra by which the case was remanded to the High Court as there was no evidence to establish that the parents of the returned candidate had converted to Christianity before the returned candidate was born.

6. Mr. K. K. Venugopal, learned counsel appearing for the respondent in Civil Appeal No. 6392 of 2010, on the other hand, submitted that there was sufficient evidence before the High Court to establish that the parents of the appellant were Christian. In this connection, he referred to Exhibits P4, P9 and P10 to show that the religion of the appellant was Christianity and not Hinduism as per his school records and School Leaving Certificate. He submitted that the documents Exhibits P4, P9 and PI0 once admitted and marked as Exhibits, the contents of these Exhibits are also admitted in evidence. He cited the decision of this Court in P.C. Purushotham Reddiar v. S. Perumal [(1972) 1 SCC 9] for the proposition that once a document is properly admitted, the contents of that document are also admitted in evidence though those contents may not be ,conclusive evidence. Mr. Venugopal submitted that if the case of the appellant was that the entry in the School Admission Register (Exhibit P-9) relating to the religion of the appellant was made by Thomas who did not actually know the religion of the father of the appellant, the appellant should have examined Thomas in support of his case, but the appellant has not examined Thomas in course of trial. He submitted that finding of the High Court that the appellant was born to Christian parents was, therefore, correct. Mr. V. Giri, learned counsel for the respondent in Civil Appeal No.6391 of 2010, and Mr. C. Rajendran, learned counsel for the respondent in Civil Appeal No. 6393 of 2010, adopted the arguments of Mr. Venugopal.

7. We may now look at the evidence on record. Exhibit P-9 is part of the School Admission Register of the Government Higher Secondary School and has been proved through its Head Mistress. Exhibit P-9 indicates that the name of the father of the appellant was 'Joseph' which was a Christian name and the religion of the appellant was Christian and he was admitted to the School on 7-6-1967. The School had standards I to VII and the appellant left the School on 5-5-1975. Exhibit P-10 is part of the Admission Register of Laxmi Vilasom High School, Pothencode, proved through its Head Master (PW-6). Exhibit P-10 shows that the appellant was admitted to this School on 5-5-1975 into Standard VIII and his name was entered as Monian J. (Joseph) and mother's name was shown as Thakkamma T. and religion of the appellant was shown as Christian. The appellant left the School on 28-02-1978. Exhibit P-4 is his School Leaving Certificate issued by the Head Master, Laxmi Vilasom High School, Pothencode, in which the name of the appellant has been shown as Monian J. (Joseph) and his religion has been shown as Christian and the mother of the appellant is shown as Thakkamma T. This School Leaving Certificate was issued after the appellant completed his Standard X in the School in 1977-78. This School Leaving Certificate has been produced by PW-1, N.S. Saji Kumar, and is the same as Exhibit R-2 produced by the appellant. The appellant in his evidence (affidavit filed before the High Court in Election Petition No.7 of 2009) has stated in para 5 that in Exhibits P-4, P-9 and P-10 and Exhibit R-2, his religion is shown as Christian, but he did not profess Christian religion at any point of time. In para 8 of the affidavit, he has stated that in Exhibit P9 his father's name is Joseph and his father was called 'Joseph' by Christian Missionaries because his father was visiting Christian Missionaries to avail help and his father was actually Kunjan and continued to be a Hindu and his alleged conversion was only nominal. The appellant has explained in his cross-examination that when he was admitted in the School for the first time his father had gone for work and his friend Thomas had taken him to School and as his father was called by the Missionaries as 'Joseph', his name was shown by Thomas as Joseph. The appellant has stated in his affidavit that he decided to get himself converted to Hinduism in 1978 and got himself converted as a Hindu on 25-05-1978 and the Kerala Hindu Mission has issued a certificate (Exhibit R-10) in proof of such conversion and his name has been shown therein as Suresh J.

8. Hence, this Court has to decide which of the two versions is proved: whether the appellant was born to Christian parents and was Christian during his childhood or whether he was born to Hindu parents and was Hindu

during his childhood. Sub-section (2) of Section 87 of the Act states that the provisions of the Indian Evidence Act, 1872 shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition. Thus, we have to be guided by the relevant provisions of the Indian Evidence Act to decide an issue of fact arising in an election trial under the Act. Section 3 of the Indian Evidence Act states that a fact is said to be proved when,after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Section 35 of the Indian Evidence Act states that an entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant. in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact. Relying on Section 35 of the Indian Evidence Act, this Court has held in Birad Mall Singhvi v. Anand Purohit [1988 (supp.) SCC 604] that the entry contained in the Admission Form or in the Scholar's Register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned and if the entry is made on the basis of the information given by a stranger or by someone else who had no special means of knowledge of the entry, such an entry will have no evidentiary value. In the present case, on the other hand, we are called upon to decide not the date of birth but the religion of a candidate in an election. In Desh Raj v. Bodh Raj [(2008) 2 SCC 186] where the caste of the candidate in an election was in issue, this Court held that the residents of a village have more familiarity with the 'caste' of a co-villager than the date of birth of the co-villager and relied upon the evidence of the co-villagers to record a finding on the caste of the candidate. It can similarly be said that the residents of a village have familiarity with the religion of the co-villagers and the information furnished by them have probative value and can be considered by the Court.

9. Thomas, who was a friend of the father of the appellant, obviously must be familiar with the religion of the father of the appellant as well as of the appellant during his childhood. The entry in Ext. P-9 which is part of the School Admission Register of the Government Higher Secondary School with regard to the, Christian name of the father of the appellant and the Christian religion of the appellant had been admittedly made on the basis of the information of Thomas. If the appellant's case is that Thomas had no knowledge of the religion of the appellant and his father, he should. have examined Thomas as a witness or should have explained why he was not examined. The entry in Ext. P-9 regarding the religion of the appellant having been made on the information of Thomas in 1967 during the childhood of the appellant several decades before the appellant contested the election must be taken to be a very relevant circumstance of great probative value for coming to the conclusion that the appellant was a Christian during his childhood. The entries in Ext. P-10 which is part of the Laxmi Vilasom High School, Pothencode, have been made in 1975 on the basis of the transfer certificate obtained from his previous school and these also indicate the religion of the appellant as Christian. The entry relating to the religion of the appellant could have been corrected by the mother of the appellant who has been shown in Ext.P-10 as his parent if the entry was not correct. The entries in the School Leaving Certificate (Exhibit P-4) issued in 1978 are on the basis of information in Exhibit P-10 and these also indicate that the appellant was a Christian. This entry relating to the religion of the appellant could also have been corrected by his mother in 1978 if his religion was not Christian. In Exhibit R-10, a certificate issued by the Kerala Hindu Mission on 25-5-1978 with regard to the conversion of the appellant to Hinduism, moreover, the appellant has been described as a Cheramar Christian upto the age of 16 years. If he was not a Christian till the age of 16 years, where was the need of his converting to Hindu religion in 1978? On consideration of all these facts and circumstances which have come into evidence, the High Court, in our considered opinion, was right in coming to the conclusion that the fact that the appellant was born to Christian parents has not been seriously disputed by the appellant. The decisions of this Court in M. Chandra v. M. Thangamuthu (supra) and in Ranjana v. State of Maharashtra (supra) cited by Mr. Rao have no application to the facts of the present case where the evidence clearly proves that the appellant was born to Christian parents and that the appellant was a Christian during his childhood upto the age of 16 years.

10. Mr. Rao next contended that the finding of the High Court that when the appellant undertook the expiatory ceremony in 1978 to reconvert himself to Hinduism, he had not attained the age of discretion as he was under 18 years of age is not correct. He relied on Section 2(o) of the Children Act, 1960 to submit that a boy who is 16 years is no longer a child. He relied on the decision of the Madras High Court in Aravamudha Iyenger v. Ramaswami Bhattar & Anr. [AIR 1952 Madras 245] wherein it has been held that under the Hindu Law minority comes to an end on the completion of the 16th year. He submitted that this Court has held in Kailash Sonkar v. Smt. Maya Devi [(1984) 2 SCC 91] that a member of the Scheduled Caste, who is converted into Christianity and after she attains the age of discretion, can decide of her own volition to re-embrace Hinduism. He cited the decision of this Court in S. Anbalagan v. B. Devarajan & Ors. [(1984) 2 SCC 112] in which this Court observed that the precedents, particularly those from South India, clearly establish that no particular ceremony is prescribed for re-conversion to Hinduism of

a person who had earlier embraced another religion and unless the practice of the caste makes it necessary, no expiatory rites need be performed. He submitted that the appellant was more than 16 years of age when he undertook Shudhi Ceremony in 1978 for reconversion and it will be clear from Ext. R-l 0, the certificate issued by the Kerala Hindu Mission on 25-05-1978, and Ext. R-9, the notification issued in the Kerala Gazette on 21-11-1978 that he reconverted to Hinduism in 1978. He argued that the evidence of appellant before the High Court and the evidence of RW -4 would show that the appellant had in fact abjured the Christian religion and was professing the Hindu religion and his marriage was performed following the ceremonies of Hindu religion with a Hindu named Bindu. He submitted that in the Admission Register of the Law College, Thiruvananthapuram (Ext. R-6) the religion of the appellant has been shown to be Hindu religion and the date of admission of the appellant is shown as 09-10-1984. He submitted that after considering such evidence, the High Court has in fact held that the appellant has been professing Hinduism at least from the date of his admission to the Law College, Thiruvananthapuram.

11. In reply, Mr. Venugopal relying on this Court's decision in S. Nazeer Ahmed v. State Bank of Mysore & Ors. [(2007) 11 SCC 75] submitted that the respondents before this Court are entitled to support the impugned judgment of the High Court by challenging any finding that might have been rendered by the High Court against the respondents in the impugned judgment. He submitted that the respondents are therefore entitled to challenge the finding of the High Court in the impugned judgment that the appellant had been professing Hinduism at least from the date of admission in the law college in 1978. He vehemently argued that the appellant has not pleaded in his written statements filed before the High Court that he was a Christian during his childhood and he converted himself to Hinduism on attaining majority and his plea in the written statements was that his parents were Hindu and that he was a Hindu even during his childhood and therefore he cannot be allowed to contend that his parents were Christian and during his childhood he was a Christian and on attaining majority he re-converted himself into Hinduism by abjuring a Christian religion. He submitted that in Perumal Nadar (dead) by LRs. v. Ponnuswami [1970 (1) SCC 605] this Court has held that a mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism but a bona fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion, and no formal ceremony of purification or expiation is necessary to effectuate conversion. He submitted that in Kailash Sonkar v. Smt. Maya Devi (supra) this Court has held that the main test to determine whether there has been reconversion is that there should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it and reconversion should not be only a ruse or a pretext or a cover to gain mundane worldly benefits. He argued that in the facts of the present case, no evidence has been adduced to show that the appellant abjured Christian religion and reconverted himself into Hindu and the evidence only shows that the appellant went through a formal reconversion to Hindu religion only with a view to avail the benefits of reservation. Mr. Giri and Mr. Rajendran adopted these contentions of Mr. Venugopal.

12. We have considered the submissions of the learned counsel for the parties and we have found that in Kailash Sonkar v. Smt. Maya Devi (supra) this Court has held that even where a person has been a Christian during his childhood, after he attains the age of discretion, he may decide of his own volition to re-embrace Hinduism and the test in such a case would be that such person had a genuine intention of reconverting to Hinduism and to abjure Christianity and completely dissociate himself from it. In the aforesaid judgment this Court has not specifically held as to what would be the age of discretion of a person willing to reconvert himself to Hinduism. In Aravamudha Iyenger v. Ramaswami Bhattar & Anr. (supra) the Madras High Court has taken a view that minority as per Hindu law comes to an end on completion of 16 years of age and this rule applies to males and females. This view, however, was expressed by the Madras High Court in the context of the Hindu Law relating to adoption and not in the context of reconversion and therefore does not apply to the facts of this case. In our considered opinion, it is on the facts of each case that the Court has to decide whether the child had attained sufficient maturity to understand the religious significance and the social consequences. of this decision to reconvert to the Hindu religion. To quote Vivian Bose, J. from his judgment delivered for the Court in Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram & Ors. (1954 SCR 817) at page 837 cited by Mr. Giri:

> "What we have to determine are the social and political consequences of such conversions and that, we feel, must be decided in a common sense practical way rather than on theoretical and theocratic grounds. "

13. We find that the appellant has pleaded in his written statements that in May 1978 he underwent ceremonies and he was given a Shudhi Certificate by the Kerala Hindu Mission and he got rid of Christianity by reconverting to Hinduism. Mr. Venugopal is thus not right in his submission that the appellant has not taken a plea of reconversion from Christianity to Hinduism in his written statements. The appellant has stated in his evidence (affidavit before the High Court) that he decided to get himself converted to Hinduism in the year 1978 and

accordingly on 25-5-1978, he approached the Kerala Hindu Mission and reconverted to Hinduism and changed his name as Suresh J. and published the fact of his conversion into Hinduism in the notification dated 21-11-1978 of the Kerala Gazette. The notification dated 21-11-1978 has been produced by him as Ext. R-9 and Certificate No.107365 dated 25-5-1978 relating to the conversion of the appellant issued by the Kerala Hindu Mission has been produced before the High Court and marked as Ext. R-10. The President of the Kerala Hindu Mission (RW -3) has been examined before the High Court and he has said that Ext. R-10 was issued by the Kerala Hindu Mission and its counterfoil receipt is in the receipt book produced by him. RW -3 has identified the signature of the Secretary of the Kerala Hindu Mission, Mr. Sudhakaran, in Ext. R-10. RW-3 has also stated before the Court that a person to be converted must first go to Hindu Temple and perform the ceremonies and thereafter has to appear before the Kerala Hindu Mission alongwith receipt and the Kerala Hindu Mission confirms the performance of ceremonies from the temple over phone and then issues a conversion certificate. RW-3 has also stated that before issuing a certificate, the Kerala Hindu Mission ascertains whether the person to be converted is willing to be converted and is having belief in Hinduism and only thereafter permits the conversion. The evidence of the appellant (RW-1), President of the Kerala Hindu Mission (RW -3) and the Certificate issued by the Kerala Hindu Mission on 25-5-1978 (Ext. .R-10) clearly establish that the appellant had on his own volition decided to reconvert to Hinduism. We also find that Ext. R-I0 was followed by the Gazette Notification (Ext. R-9). These two documents are clear proof of the declaration of the intention of the appellant to reconvert himself to Hinduism from Christianity. This declaration of intention of the appellant has also been accompanied by conduct unequivocally expressing that the appellant has in fact reconverted himself to Hinduism. The appellant has produced before the High Court a certificate of marriage issued under the Kerala Registration of Marriages (Common) Rules, 2008, which is marked as Ext. R-14 and in Ext. R-14, the date of marriage of the appellant is shown as 30-6-1994 and the name of the appellant is shown as Kodikunnil Suresh and the wife of the appellant is shown as Bindu Sekhar. The appellant has stated in his affidavit before the High Court that Bindu is a member of Scheduled Caste and is a Hindu and that during the marriage there was tying of Tahali and that he garlanded the bride in the marriage ceremony and his wife also garlanded him. He has also stated that there was exchange of rings and he gave pudava to her and the form of the marriage was that of the Cheramar community. He has further stated in the affidavit that he worshipped Dharma Sastha in Sabarimala and that he also goes for worship to Pazhavangadi Ganapathi Temple and he has two children, elder one is named Aravind Suresh and younger one is named Gayathri Suresh and that Ezhuthiniruthu of the elder and the younger one took place at Mookambika Temple. RW-4, who is a voter of Adoor Parliamentary Constituency and who had been the Head Master of the Kulthupuzha Government High School and the Deputy Director of Education, Kollam, has been examined before the High Court and he has stated that he was invited for the marriage of the appellant at the Subramaniam Hall of Trivandrum Club and the marriage was performed following the ceremonies of Hindu religion and after lighting the lamp in front of Nirapara, the bride and the bridegroom were made to sit there and the marriage was performed under the guidance of Sri. Krishnan Nair of Kottarakkara and that the appellant had tied the Thali and the bride and bridegroom exchanged garlands. Nothing also has been brought out in the cross-examination of either the appellant or RW-4 to disbelieve their evidence. Nothing has been brought out in the cross-examination of the appellant for the Court not to rely on his evidence that he has been visiting the temples for worship. On a consideration of the evidence led before the High Court, we are thus of the opinion that the appellant had not only unequivocally expressed the intention of reconverting to Hinduism in 1978, but also conducted himself since 1978 in a manner true to the faith of Hindu religion by marrying a Hindu in accordance with the ceremonies of the Hindu religion and had been visiting Hindu temples for worship of different idols and had in fact abjured the Christian religion. In other words, the appellant had reconverted to Hinduism in 1978 after fully realizing the religious significance and social consequences of his decision to reconvert to Hinduism. The High Court, therefore, was not right in holding that the conversion of the appellant under Ext. R-9 and R-10 at the age of 16 years was not a valid conversion to Hinduism. In fact, the High Court has realized the difficulty in the aforesaid finding and has at the same time rendered a contradictory finding that the respondent has been professing Hindu religion at least from the time of his admission to the law college, Thiruvananthpuram.

14. Mr. Rao finally challenged the findings of the High Court that there was no acceptable evidence to prove that.the appellant was accepted as a member of the Cheramar caste or the Pulayan caste after his reconversion to Hinduism. He submitted that the appellant had himself stated on oath before the High Court that he belongs to Cheramar caste and that the form of his marriage with Bindu was the one to which the Cheramar community adheres. He submitted that the Kerala Cheramar Sangham had issued a certificate dated 25-10-1979 produced before the High Court as Exhibit R-17 which would show that the appellant was accepted and taken into the fold of Hindu Cheramar community by its members. He referred to the evidence of RW-7, the Ex-Secretary of Kerala Cheramar Sangham, who has identified the signature of Sri Rajaretnam the President of the Kerala Cheramar Sangham

in Exhibit R-17. He submitted that in Kerala the Cheramar caste and the Pulayan caste are actually one and the same caste. He referred to the evidence of RW-5, the General--Secretary of Kerala Pulayan Mahasabha, that the appellant participated in a rally of Kerala Pulayan Mahasabha at Eranakulam in February, 2008. He submitted that the Returning Officer in his proceedings dated 31-03-2009 has considered the caste certificate dated 12-03-2009 issued by the Tehsildar, Nedumangad, certifying that the appellant belongs to the Hindu Cheramar caste and has accepted the declaration of the appellant in the nomination papers that he belongs to the Cheramar caste. The certificate issued by the Tehsildar, Nedumangad, has also been exhibited as Exhibit P-2. He also relied on the findings of PW-8, Tehsildar, Kotarakkara that persons, who are known as Cheramar in Kollam, are known as Pulayan in Kotarakkara. He argued that the appellant has been elected from the Adoor reserved constituency in the years 1989, 1991, 1996 and 1999 and this shows that he has been accepted as a member of the Scheduled Caste by the voters of the reserved constituency. He cited the decision of this Court in *S. Anbalagan* v. *B. Devarajan & Ors.* (supra) and *Kailash Sonkar* v. *Smt. Maya Devi* (supra) wherein the circumstance that the voters of the Rasipuram . Parliamentary Constituency reserved for the Scheduled Castes elected a candidate to the Lok Sabha has been treated as an outstanding circumstance to prove acceptance of that candidate by the Scheduled Caste community. He. submitted that the High Court was, therefore, not at all right in recording the finding that the appellant who was professing Hindu religion had not been accepted by the members of the Cheramar caste or the Pulayan caste.

15. In reply, Mr. Venugopal submitted that the fact that the appellant was elected from a reserved constituency in the earlier elections cannot prevent the disqualification from being established in a subsequent election as each election results in a fresh cause of action. He cited the decisions of this Court in C.M. Arumugam v. S. Rajgopal and others [(1976) 1 SCC 863] and Satrucharla Vijaya Rama Raju v. Nimmaka Jaya Raju and others [(2006) 1 SCC 212] in which it has been held that every election furnishes a fresh cause of action for a challenge to that election and adjudication on a prior election petition cannot be conclusive in a subsequent proceeding. According to him, therefore, the fact that the appellant on five earlier elections had been elected from a constituency reserved for Scheduled Caste is not a bar to the challenge to his election in 2009 from a constituency reserved for Scheduled Caste on the ground that he was not a member of the Scheduled Castes. He submitted that in *C. M. Arumugam* v. *S. Rajgopal* and others (supra) this Court considered whether in fact S. Rajgopal was accepted as a member of Adi Dravida caste after his reconversion to Hinduism and after considering the various circumstances detailed in para 18 of the judgment as reported in the SCC came to the conclusion that after his reconversion to Hinduism, S. Rajgopal was recognized and accepted as a member of Adi Dravida caste by the other members of that community. He vehemently argued that in the facts of the present case there is no circumstance to show that the appellant, if at all has been reconverted to Hinduism, was accepted by the Cheramar caste.

16. Mr. Giri, learned counsel for respondent in Civil Appeal No.6391 of 2010, adopted the arguments of Mr. Venugopal and further submitted that in the Constitution (Scheduled Castes Order, 1950, Part VIII) relating to State of Kerala, in Entry 54, Pulayan and Cheramar castes have been shown as two separate castes. He submitted that Pulayan and Cheramar castes are thus two separate and distinct castes and onus is on the appellant to show that after his reconversion he was accepted by either the Pulayan. caste or the Cheramar caste. He argued that the pleadings of the appellant and the evidence produced by him would show that the appellant was not clear as to which of the two castes he was accepted. He cited the decision in S. Rajagopal v. C. M. Armugam & Ors. [1969 (1) SCR 254] in which the law relating to acceptance of a person by members of caste to which the appellant originally belonged after his reconversion to Hinduism has been laid down.

17. Mr. C. Rajendran, learned counsel for the respondent in Civil Appeal No.6393 of 2010, relied on the decisions of this Court in S. Rajagopal v. C.M. Armugam & Ors. (supra) cited by Mr. Giri and C.M. Arumugam v. S. Rajgopal & Ors. (supra) cited by Mr. Venugopal and submitted that the appellant has not been able to prove the kind of circumstances mentioned in the aforesaid decisions. to show that he had been accepted into the fold of Cheramar caste after his reconversion to Hinduism.

18. We have perused the decisions of this Court cited by the learned counsel for the parties on the acceptance of the reconvert by the members of the original caste of the reconvert. In S. Rajagopal v. C. M. Armugam & Ors. (supra) this Court agreed with the High Court that Rajgopal, on conversion to Christianity, ceased to belong to Adi Dravida caste but held that if the members of the caste accept the reconversion of a person as a member of their caste, it should be held that he does become the member of that case, even though he may have lost membership of that caste on conversion to another religion. In the aforesaid decision, this- Court, however, held that Rajgopal though married to a member of the Adi Dravida caste, his marriage was not performed according to the rites observed by members of that caste and the marriage not being according to the system prevalent in the caste itself, that marriage cannot therefore be proof of admission of Rajgopal in the caste by members of the caste in general. This Court further found in the aforesaid case that no other evidence was given to show that at any subsequent stage any step was taken by the members of the caste

indicating that Rajgopal was being accepted as a member of that caste. In *C. M. Armugam* v. *S. Rajgopal & Or*s. (supra), this Court noted that in its earlier decision in S. Rajgopal v. C. M. Armugam and others (supra) Rajgopal had not produced evidence to show that after his reconversion to Hinduism, any step had been taken by the members of Adi Dravida caste indicating that he was being accepted as a member of that caste. This Court, however, found in this later case of C. M. Armugam v. S. Rajgopal & Ors. (supra) that there were several circumstances to show that Rajgopal was accepted as Adi Dravida Hindu and these circumstances were: he had been invited to lay the foundation stone for the construction of a new wall of the temple at Jambakullam, which was essentially a temple of. Adi Dravida Hindus; he was requested to participate in Margazhi Thiruppavai celebration at the Kannabhiran temple, which was also a temple essentially managed by the Adi Dravida Hindus; he was invited to preside at the Adi Krittikai festival at Mariamman temple where the devotees are Adi Dravidas or to start the procession of the deity at such festival; the children of Rajgopal were registered in the school as Adi Dravida Hindus and even he himself issued a certificate stating that his son was a Scheduled Caste Adi Dravida Hindu; he participated in the All India Scheduled Castes Conference attended largely by Adi Dravida Hindus. Considering all these circumstances, this Court held that Rajgopal after his reconversion to Hinduism was recognized and accepted as a member of Adi Dravida caste by the other members of that caste.

19. We further find that in *Kailash Sonkar v. Smt. Maya Devi* (supra), this Court observed that a dominant factor to determine the revival of the caste of a convert from Christianity to his old religion would be that in cases of election to the State Assemblies or the Parliament where under the Presidential Order a particular constituency is reserved for a member of the scheduled caste or tribe and the electorate gives a majority verdict in his favour, then this would be doubtless proof positive of the fact that his community has accepted him back to his old fold and this would result in a revival of the original caste to which the candidate belonged. Similarly, in *S. Anbalagan v. B. Devarajan & Ors.* (supra) this Court observed that the fact that the voters of the Rasipuram Parliamentary Constituency reserved for the Scheduled Castes accepted his candidature for the reserved seat and elected him to the Lok Sabha twice was an outstanding circumstance to show that he belongs to Adi Dravida caste.

20. In the light of the aforesaid decisions of this Court, we may now examine the facts of the present case. The father of the appellant, it is not disputed, originally was a member of the Cheramar caste which was admittedly a Scheduled Caste in the State of Kerala. On conversion to Christianity, the father of the appellant had ceased to be a member of the Cheramar caste. This is because on conversion to Christianity, a person ceases to belong to his original caste as has been held by this Court in *S. Rajgopal v. C.M. Armuqam and others* (supra). We have already held that in 1978 the appellant reconverted into Hinduism and continued to be a Hindu thereafter. The appellant has stated in para 13 of his affidavit (examination-in-chief) before the High Court that in 1979 he was actively working for the upliftment of the Cheramar community and the Kerala Cheramar Sangham issued a certificate dated 25-10-1979 produced and marked before the High Court as Exhibit R-17. This certificate has been signed by S. Rajaretnam, the then President of the Kerala Cheramar Sangham, and it states that being a descendant of Scheduled Caste convert and by the conversion the appellant is accepted and admitted into the fold of Hindu Cheramar Community by its members who are Cheramar Hindus and by this fact has become a member of Cheramar Community which is recognized as a Scheduled Caste. This certificate dated 25-10-1979 has been issued ten years prior to 1989 when the appellant for the first time contested from the Adoor Parliamentary Constituency reserved for the Scheduled Caste. In the years 1989, 1991, 1996 and 1999, the appellant contested and got elected from the Adoor Parliamentary Constituency reserved for Scheduled Caste. In between, in the year 1994, the appellant got married to Bindu and his affidavit (examination-in-chief) before the High Court states that the marriage was performed in accordance with the form of Cheramar community. All these circumstances clearly establish that the appellant after his reconversion to Hinduism in 1978 had been accepted by the members of the Cheramar caste.

21. The Cheramar community and the Pulayan community, however, appear to be two distinct castes as per Entry 54 in Part VIII of the Schedule to the Constitution (Scheduled Castes) Order, 1950 as has been contended by Mr. Giri. From the written statements of the appellant and from his evidence, however, it appears that the appellant entertains a belief that the Cheramar caste and the Pulayan caste are one and the same caste. Perhaps, because of this belief he has married Bindu who belongs to the Pulayan caste. The fact, however, remains that the appellant has declared himself to be belonging to the Cheramar caste in his nomination form and there was no declaration by him that he belongs to the Pulayan caste. The Returning Officer relying on the certificate Ext. P-2 issued by the Tehsildar, Nedumangdu dated 12-03-2009 had come to the conclusion that the appellant belongs to Cheramar caste and had accordingly accepted his nomination. The relevant findings of the Returning Officer in the proceedings dated 31-3-2009 (Ex.P-3) are quoted here:

''The distinction between Hindu Cheramar and Hindu Pulaya is very thin and the local usage confuses even experts. Both are scheduled castes and these areas which require a thorough enquiry by experts and

examination of witnesses on both sides are also required which I was not supposed to do so as the Returning Officer. These questions can be enquired into and decided only by a court of competent jurisdiction perhaps in an election petition. If the nomination of a candidate is refused on grounds not established ignoring an authoritative evidence he will be prejudiced in exercising his constitutional right to contest an election and to establish his claim before a court of law. If he is not eligible the other candidates have a remedy by way of election petition which will settle the issue finally. Therefore, I rely on the certificate of the Tahsildar, Nedumangadu and decide that the candidate is competent to contest in the election from the reserved constituency. The nomination satisfies all the legal requirements and it is valid in law. In the circumstance the nomination is accepted.''

The aforesaid findings of the Returning Officer would show that he was of the view that the distinction between Hindu Cheramar and Hindu Pulaya was very thin and the local usage confuses even the experts and that both were Scheduled Castes and the areas which require a thorough enquiry by experts and examination of witnesses on both sides are also required which he was not supposed to do so as the Returning Officer. The evidence would further show that ultimately the Returning Officer relied on the certificate of Tehsildar, Nedumangad, according to which the appellant belongs to the Hindu Cheramar caste and decided that the appellant was competent to contest the election from the reserved constituency and accordingly accepted his nomination. According to us, the appellant was required to plead and lead evidence that he was a member of the Cheramar caste and after his reconversion he was accepted by the members of the Cheramar caste. So long as he has pleaded and adduced reliable evidence to show that he was originally a member of the Cheramar caste and after his conversion has been accepted back as a member of the Cheramar caste, the court cannot throw out his case only on the ground that he, like the Retuming Officer, did not know the thin distinction between the Cheramar and Pulayan castes. The findings of the High Court, therefore, that there was no acceptable evidence to prove that the appellant was accepted as a member of the Cheramar caste after his reconversion to Hinduism was contrary to the evidence on record.

22. In the decisions of this Court in *C. M. Arumugam* v. *S. Rajgopal and others* (supra) and *Satrucharla Vijaya Rama Raju* v. *Nimmaka Jaya Raju and others* (Supra) cited by Mr. Venugopal this Court has held that every election petition furnishes a fresh cause of action for a challenge to that election and adjudication on a prior election petition cannot be conclusive in a subsequent proceeding. These decisions have no application to the facts of the present case. It is not the case of the appellant that any decision in an election petition has. been rendered by the court that the appellant was a member of the Scheduled Caste and was therefore qualified to contest the election for a constituency reserved for Scheduled Caste and that such earlier decision of the Court constitutes *res judicata* on this issue. The case of the appellant is that in four earlier elections the voters of a constituency reserved for Scheduled Castes have elected him from the constituency and this conduct of the voters show that the members of the Scheduled Castes have accepted him back to the fold of his original cast, namely, the Cheramar community. The fact that the appellant has been elected four times from the Adoor Parliamentary Constituency reserved for the Scheduled Caste is a very strong circumstance to establish that he has been accepted by the members of his caste after his reconversion to Hinduism.

23. In the result, we set aside the impugned order of the High Court and hold that the appellant was qualified under Section 4(a) of the Act to be chosen to fill the seat in the House of People from Mavelikkara Parliamentary Constituency reserved for the Scheduled Castes and that his nomination was not improperly accepted by the Returning Officer and accordingly his election was not void under Section 100 (l)(a) and 100 (l)(d)(i) of the Act. The appeals are allowed and the three Election Petitions of the respondents are dismissed. The appellant will be entitled to the amount deposited by the respondents under Section 117 of the Act as security deposit towards the costs. The substance of this decision will be intimated to the Election Commission and the Speaker of the House of the People in accordance with Section 116-C (2) of the Act.

Sd.

.....J.

(ALTAMAS KABIR)

Sd.

.....J.

(A. K. PATNAIK)

New Delhi,
May 12, 2011.

[No. 82/KL-HP/3, 7, 8/2009/2010]

By Order,
TAPAS KUMAR, Principal Secy.

Printed by the Manager, Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.